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Che Man bin Che Mud v Majlis Peguam Malaysia

B HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-17D-25–11 OF 2020
NOORIN BADARUDDIN J
7 NOVEMBER 2021

C *Legal Profession — Admission — Restoration to rolls of advocates and solicitor — Plaintiff filed application under s 107 of Legal Profession Act 1976 — Whether based on circumstances of case, it was fair and reasonable for plaintiff to be restored to roll of advocate and solicitor — Whether plaintiff fit and proper person to resume practice as advocate and solicitor — Whether plaintiff was truly penitent — Whether plaintiff had made restitution — Legal Profession Act 1976 ss 94(3)(c), (d), (o) & 107(1)*

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The plaintiff was an advocate and solicitor and the owner of a firm known as Messrs Che Man & Partners. A complaint to the Kelantan Bar Committee ('the KBC') was lodged against the plaintiff by a legal firm ('the complainant') acting on behalf of Hongkong & Shanghai Banking Corp in relation to a sum of RM34,392 ('the said sum') which ought to be held by the plaintiff. The matter was referred to the Bar Council and the disciplinary committee ('the DC') found that the plaintiff had failed: (a) to acknowledge receipt of the said sum until four and a half months later and after the matter was reported to the KBC; (b) to provide satisfactory explanation to the KBC for the delay in acknowledging the receipt of the said sum; (c) to provide evidence to the KBC that the said sum remitted to him by the complainant was kept in a clients' account until payment was made out for the duration; and (d) to attend his office for more than three months. Finally, the DC found that the plaintiff was guilty of grave misconduct under ss 94(3)(c), (d) and (o) of the Legal Profession Act 1976 ('the LPA'). On the recommendation by the DC, the plaintiff was struck off the roll of advocates and solicitors. In the present case, the plaintiff applied for his name to be restored to the roll of advocates and solicitors pursuant to s 107 of the LPA ('the plaintiff's application'). The crux of the Bar Council's objection against the plaintiff's application was premised on a suit filed by the plaintiff in 2017 ('the 2017 Suit') against the Bar Council, the Disciplinary Board ('the DB') and two members of the DC. It was argued that the 2017 Suit clearly showed that the plaintiff was not remorseful nor penitent at all and as such he was not a fit and proper person to have his name restored to the roll. The test under s 107(1) of the LPA was whether in considering the circumstances of the case, it was fair and reasonable that the plaintiff be restored to the roll of advocate and solicitor of the High Court of Malaya.

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Held, allowing the plaintiff's application:

(1) Repentant and remorse could not be objectively measured. The 2017 Suit could not be taken as a fact or proof or indication that the plaintiff had no remorse and had not repented. There were no reported cases where the courts had held that a solicitor who appealed against the decision of the DB was without remorse. The 2017 Suit was a matter of last resort for the plaintiff to seek justice form the court. An appeal against the decision of the DB was a right given by the law to the aggrieved advocate and solicitor against the order made by the DB. The plaintiff could not be punished for exercising such rights made available under the law (see paras 33–34 & 38).

(2) It was sufficient for the plaintiff to be seen as committed to personal change and resolved to live a more responsible and humane life. He had accepted the punishment and had not appealed against the DB's decision. He had dismantled his legal practice wilfully. In addition, the plaintiff had suffered financial loss and shame for 32 years. It could not be disputed that during the long lapse of time, he had led a blameless life since his suspension in 1989 until now. The plaintiff had also settled his debt and was discharged from bankruptcy on 24 February 2017. The complaint lodged by the complainant had also been resolved in that the plaintiff had issued receipt to the complainant and there was no question of restitution as the plaintiff did not misappropriate the complainant's money. The court was also satisfied that the plaintiff had demonstrated that he was still very much in touch with the law (see paras 39–41 & 48).

(3) Considering that the plaintiff had been practising at the Kuala Lumpur Regional Centre for Arbitration without any complaint from his clients and the fact that he represented himself all the way to the Federal Court in the 2017 Suit, the court was of the view that the plaintiff was a fit and proper person to be readmitted to the roll and to be able to practice again. On a full consideration of the facts and circumstances of the case, the court was satisfied that it was fair and reasonable to re-admit and restore the plaintiff to the roll of advocate and solicitor pursuant to s 107 of the LPA (see paras 50–51).

[Bahasa Malaysia summary

Plaintif adalah seorang peguam bela dan peguam cara dan pemilik firma yang dikenali sebagai Tetuan Che Man & Partners. Aduan kepada Jawatankuasa Peguam Kelantan ('KBC') telah dikemukakan terhadap plaintif oleh sebuah firma guaman ('pengadu') yang bertindak bagi pihak Hongkong & Shanghai Banking Corp berhubung dengan jumlah RM34,392 ('jumlah tersebut') yang sepatutnya dipegang oleh plaintif. Perkara tersebut telah dirujuk kepada Majlis Peguam dan jawatankuasa tatatertib ('DC') mendapati bahawa plaintif telah gagal: (a) untuk mengakui penerimaan jumlah tersebut sehingga empat

setengah bulan kemudian dan selepas perkara tersebut dilaporkan kepada KBC; (b) untuk memberikan penjelasan yang memuaskan kepada KBC untuk kelewatan dalam mengakui penerimaan jumlah tersebut; (c) untuk memberikan keterangan kepada KBC bahawa jumlah wang tersebut yang dihantar kepadanya oleh pengadu telah disimpan dalam akaun pelanggan sehingga pembayaran dibuat untuk tempoh tersebut; dan (d) untuk menghadiri pejabatnya selama lebih daripada tiga bulan. Akhirnya, DC mendapati bahawa plaintif bersalah atas salah laku berat di bawah ss 94(3)(c), (d) dan (o) Akta Profesion Undang-undang 1976 ('APUU'). Atas syor oleh DC, plaintif telah digugurkan daripada senarai peguambela dan peguam cara. Dalam kes ini, plaintif memohon agar namanya dikembalikan kepada senarai peguam bela dan peguam cara menurut s 107 APUU ('permohonan plaintif'). Intipati bantahan Majlis Peguam terhadap permohonan plaintif adalah berdasarkan saman yang difailkan oleh plaintif pada 2017 ('saman 2017') terhadap Majlis Peguam, Lembaga Tatatertib ('LT') dan dua ahli DC. Dihujahkan bahawa saman 2017 tersebut jelas menunjukkan bahawa plaintif tidak menyesal dan tidak insaf sama sekali dan oleh itu dia bukan orang yang layak dan sesuai untuk namanya dikembalikan ke dalam senarai tersebut. Ujian di bawah s 107(1) APUU adalah sama ada dalam mempertimbangkan keadaan kes, adalah adil dan munasabah untuk plaintif dikembalikan kepada senarai peguam bela dan peguam cara Mahkamah Tinggi Malaya.

Diputuskan, membenarkan permohonan plaintif:

(1) Keinsafan dan penyesalan tidak dapat diukur secara objektif. Saman 2017 tersebut tidak boleh diambil sebagai fakta atau bukti atau petunjuk bahawa plaintif tidak menyesal dan tidak insaf. Tiada kes yang dilaporkan di mana mahkamah telah memutuskan bahawa seorang peguam cara yang merayu terhadap keputusan LT adalah tanpa penyesalan. Saman 2017 tersebut adalah pilihan terakhir bagi plaintif untuk mendapatkan keadilan di mahkamah. Rayuan terhadap keputusan LT adalah hak yang diberikan oleh undang-undang kepada peguam bela dan peguam cara yang terkilan terhadap perintah yang dibuat oleh LT. Plaintif tidak boleh dihukum kerana melaksanakan hak sedemikian yang disediakan di bawah undang-undang (lihat perenggan 33–34 & 38).

(2) Adalah memadai jika plaintif dilihat komited terhadap perubahan peribadi dan berazam untuk menjalani kehidupan yang lebih bertanggungjawab dan berperikemanusiaan. Dia telah menerima hukuman tersebut dan tidak membuat rayuan terhadap keputusan LT. Dia telah menamatkan amalan undang-undangnya secara rela. Selain itu, plaintif telah mengalami kerugian kewangan dan rasa malu selama 32 tahun. Tidak dapat dinafikan bahawa dalam tempoh masa yang panjang tersebut, beliau telah menjalani kehidupan yang elok sejak digantung pada 1989 sehingga kini. Plaintif juga telah menjelaskan hutangnya dan

telah dilepaskan daripada kebankrapan pada 24 Februari 2017. Aduan yang dikemukakan oleh pengadu juga telah diselesaikan di mana plaintif telah mengeluarkan resit kepada pengadu dan tidak timbul soal pembayaran balik kerana plaintif tidak menyalahgunakan wang pengadu. Mahkamah juga berpuas hati bahawa plaintif telah menunjukkan bahawa dia masih sangat mengambil tahu tentang undang-undang (lihat perenggan 39–41 & 48).

(3) Memandangkan plaintif telah menjalankan amalan di Pusat Timbang Tara Serantau Kuala Lumpur tanpa apa-apa aduan daripada anak guamnya dan fakta bahawa beliau mewakili dirinya sehingga ke Mahkamah Persekutuan dalam saman 2017, mahkamah berpendapat bahawa plaintif adalah seorang yang layak dan sesuai untuk diterima masuk semula ke senarai tersebut dan boleh beramal semula. Atas pertimbangan penuh fakta dan keadaan kes, mahkamah berpuas hati bahawa adalah adil dan munasabah untuk menerima semula dan mengembalikan plaintif kepada senarai peguam bela dan peguam cara menurut s 107 APUU (lihat perenggan 50–51).]

Cases referred to

Chan Chow Wang v Malaysian Bar [1986] 2 MLJ 159 (refd)
Darshan Singh Atma Singh v Majlis Peguam Malaysia [2015] MLJU 2350; [2015] 4 CLJ 1083, HC (refd)
Khong Jin Teong v Majlis Peguam Malaysia [2015] 2 CLJ 1109, HC (refd)
Patrick Samuel a/l Joseph Sebastian v Majlis Peguam Malaysia [2014] 9 MLJ 479, HC (refd)
Teoh Hooi Leong v Bar Council Malaysia [1991] 2 MLJ 190, SC (refd)
Thavananthan a/l Balasubramaniam v Majlis Peguam Negara [2010] 3 MLJ 316, FC (refd)

Legislation referred to

Legal Profession Act 1976 ss 38, 88A, 88A(7), 94(3)(c), (3)(d), (3)(o), 98, 107, 107(1), 107(3)
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 r 8

Che Man bin Che Mud (representing himself) for the appellant.
Heng Yee Keat (Joseph Khor with him) (Christopher & Lee Ong) for the respondent.

Noorin Badaruddin J:

[1] This is the plaintiff's application for his name to be restored to the roll of advocate and solicitor pursuant to s 107 of the Legal Profession Act 1976 ('the LPA').

A BACKGROUND

[2] The plaintiff read law at the University of Malaya and subsequently joined the judicial and legal service prior to being called to the Bar on 3 September 1981. Thereafter, he practised law as a partner at Messrs Ghani Mohd & Che Man. The plaintiff then set up a sole proprietorship under the name and style of Messrs Che Man & Partners in 1985. He was in possession of his last Annual Practicing Certificate for the year 1988.

[3] On 1 July 2010 the Bar Council lodged a complaint against the plaintiff to the Disciplinary Board. The plaintiff was subsequently struck off the roll on 23 June 2011.

THE COMPLAINT

[4] The complaint against the plaintiff is apparent from the Bar Council's report which is placed before this court under s 107(3) of the LPA.

[5] Vide letter 31 March 1987, a complaint ('complaint 1') was made to the Kelantan Bar Committee ('KBC') by Messrs Jackson Masacorale ('complainant') acting on behalf of Hongkong & Shanghai Banking Corp ('bank'). According to the said letter, the plaintiff through his firm, Messrs Che Man & Partners was alleged to have received a sum of RM34,392 ('said sum') from the bank and that the sum was to be held by the plaintiff subject to an express undertaking not to part with the said sum until the plaintiff's client had obtained a discharge and indemnity

[6] On 10 May 1987, KBC sought an explanation from the plaintiff to furnish proof that monies were maintained in his client's account during the material period. In the KBC's undated report, it was stated that the plaintiff failed to render a satisfactory explanation.

[7] KBC lodged another complaint on 27 December 1988 to the Bar Council that the plaintiff has absconded ('complaint 2') and urged the Bar Council to proceed immediately under s 88A of theLPA. Further, KBC informed Bar Council that the Disciplinary Committee appointed for complaint 1 was unable to proceed with its investigation due to the absence of the plaintiff.

[8] Based on complaint 1 and 2, Bar Council filed an application under s 88A of the LPA to the Kuala Lumpur High Court and the plaintiff was suspended from practice vide order of the High Court dated 16 October 1989 ('interim suspension order').

[9] On 12 March 2010, the plaintiff applied to set aside the interim suspension order and on 4 March 2011, the plaintiff's application was allowed.

[10] On 1 July 2010, the Bar Council lodged a complaint against the plaintiff pursuant to s 88A(7) of the LPA. Subsequently, the plaintiff was struck off the roll vide order of the Disciplinary Board dated 23 June 2011.

[11] The plaintiff did not file any appeal against the order of the Disciplinary Board dated 23 June 2011 striking his name off the roll.

[12] This is in fact the plaintiff's second bid for reinstatement to the roll. In 2016, the plaintiff filed an application for reinstatement but later withdrew his application with liberty to file afresh after the Bar Council disclosed to the court that he was an undischarged bankrupt at the material time.

[13] On 4 May 2017, the plaintiff filed a suit against the Bar Council, Disciplinary Board and two members of the Disciplinary Committee ('2017 Suit') claiming, inter alia:

(a) against the Bar Council for loss of opportunity to earn a living as an advocate and solicitor from 1990 to 2010 for an amount of RM3.6m; and

(b) against the Bar Council, the Disciplinary Board and two members of the Disciplinary Committee for loss of opportunity to earn a living as an advocate and solicitor from 2011 to 2017 for an amount of RM4.2m and general and punitive damages caused by stress, embarrassment and loss of reputation for an amount of RM3m.

[14] On 11 December 2017, the High Court ordered that the 2017 Suit be struck out. Dissatisfied, the plaintiff appealed to the Court of Appeal and the same was allowed on 24 June 2019. Thereafter, the Bar Council filed an application for leave to appeal to the Federal Court and the same was dismissed on 6 January 2021.

FINDINGS AND RECOMMENDATIONS OF THE DISCIPLINARY COMMITTEE

[15] The Disciplinary Committee found that the plaintiff had failed:

(a) to acknowledge receipt of the said sum received from the complainant acting for the bank until 4 1/2 months later and after the matter was reported to the KBC;

(b) to provide satisfactory explanation to the KBC for his delay of 4 1/2 months in acknowledging the receipt of the said sum;

A (c) to provide evidence to the KBC that the said sum remitted to him by the complainant was kept in a clients' account until payment was made out for the duration; and

(d) to attend his office for more than three months.

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[16] The Disciplinary Committee found the applicant guilty of grave misconduct under s 94(3)(c), 3(d) and 3(o) of the LPA and unanimously recommended that the plaintiff be struck off the roll.

C SUMMARY OF THE BAR COUNCIL'S SUBMISSIONS/VIEW

[17] It is the Bar Council's position that it is not fair and reasonable for the plaintiff be restored to the roll for the following reasons:

D (a) the plaintiff is not truly penitent and this can be gleaned from the fact that he had filed the 2017 Suit against them; and

(b) there is insufficient evidence to show that there has been a change in the plaintiff's character as to make him a fit and proper person to resume practice at the Bar.

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SUMMARY OF THE PLAINTIFF'S CONTENTIONS

[18] Summarily, the plaintiff states that he is remorseful, penitent and promised that he will never commit the same mistakes if he is allowed to be in F practice again. According to the plaintiff he had been struck off from the roll for a long period of time and ought not be punished longer for his failure to acknowledge receipt of the said sum received from the complainant acting for the bank until 4 1/2 months later.

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[19] According to the plaintiff the 2017 Suit was filed on the grounds of tort as there was mala fide on the part of the Bar Council in lodging a new complaint against him when the first complaint was found to be out of time and void by virtue of s 98 of the LPA. As a person who suffers damages by such H action, the plaintiff states that he has the right to claim for damages against the mala fide act of the Bar Council and such act should not be construed as a challenge to the Disciplinary Board's decision.

[20] The plaintiff pleaded that he had managed to pull himself out of his I financial difficulties and took responsibility to settle his debts to his creditors.

[21] The plaintiff further states that he is not out of touch with the law and able to work as a legal practitioner reflected by the fact that he had been practicing at the Arbitration Centre in Kuala Lumpur for years without any

complaint levelled against him and that he had also represented himself in the 2017 Suit all the way to the Federal Court. A

FINDINGS

The law B

[22] The test under s 107(1) of the LPA is whether in considering the circumstances of the case, it is fair and reasonable that the plaintiff be restored to the roll of advocate and solicitor of the High Court of Malaya (see *Thavananthan a/l Balasubramaniam v Majlis Peguam Negara* [2010] 3 MLJ 316). The Federal Court through the judgment of Zulkefli FJC (as he then was) had cited the case of *Teoh Hooi Leong v Bar Council Malaysia* [1991] 2 MLJ 190 where the Supreme Court had stated that the word 'fair' must necessarily mean that the decision must be fair to the members of the public, to court and last but not least to the advocate and solicitor concerned. To be reasonable the Supreme Court further stated that the decision must be based on reasonable grounds and be supported by cogent evidence and not one based on conjecture or speculation. C D

[23] It is apposite to note that in *Teoh Hooi Leong*, Hashim Yeop Sani CJ (as he then was) further stated that: E

> The court should not however forget that once removed from the roll it must not be construed that the door is shut forever to the lawyer. A conviction should not be regarded in every case as a permanent unfitness. Disbarment is not necessarily intended to be permanent but that a heavy burden lay upon an applicant to show that he is now a fit and proper person to have his name restored to the roll. F

[24] The onus is therefore on the plaintiff to show that — G

(a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;

(b) he is truly penitent; and

(c) he has made restitution. H

(see *Chan Chow Wang v Malaysian Bar* [1986] 2 MLJ 159).

[25] It is also clear that the court must consider the view of the Bar Council. I

[26] Foremost, in this instant matter, the plaintiff has been struck off from the roll for nine years and 11 months. If one were to take into consideration his suspension since 16 January 1989, the plaintiff has in fact been barred from practicing for 32 years.

A **[27]** The crux of the Bar Council's objection against the present application is premised on the 2017 Suit. It is contended that the 2017 Suit clearly shows that the plaintiff is not remorseful nor penitent at all and as such he is argued to be not a fit and proper person to have his name restored to the roll. According to the Bar Council there is insufficient evidence to show that there
B has been a change in the plaintiff's character as to make him a fit and proper person to resume practice at the Bar.

[28] The plaintiff on the other hand has offered his explanation as to his position in regard to the 2017 Suit. He explained that when he obtained a copy
C of the order for striking off from the Disciplinary Board on 19 October 2016, he did not immediately take a legal action against the Bar Council.

[29] The first step he took was to apply for restoration under s 107 of the LPA which was filed on 29 October 2016. However, upon objection by the Bar
D Council on the ground that he was then an undischarged bankrupt, he withdrew the motion with liberty to file afresh. According to the plaintiff, he was then left with no other choice but to take a civil action as the facts showing malicious prosecution is clear to him. He filed civil action on 4 May 2017 as the
E claim would be barred by limitation by 23 June 2017 and if he did not file the civil action he would lose all recourse for justice. The plaintiff explained that this is more so when the Bar Council by its conduct indicated that it will oppose an application for restoration in any event.

F **[30]** On 5 October 2020 he then again filed an application for restoration. This is due to the fact that in the 2017 Suit the High Court cannot make an order for restoration.

[31] The plaintiff has attached the letter of offer to the Bar Council where he
G stated that he is willing to withdraw the 2017 Suit against the Bar Council if it agrees to support the present application and in good faith issue the Annual Practicing Certificate to him. The plaintiff had made this offer since September 2020 and again on 19 April 2021.

H **[32]** The plaintiff has submitted that he has accepted the punishment of striking off without question. He served the punishment of striking off which is now already nine years and nine months. He did not appeal against the order of the Disciplinary Board and having suffered the punishment, he deeply regrets the misdeed that he committed as decided by the Disciplinary
I Committee and Disciplinary Board.

[33] This court is of the considered view that the 2017 Suit cannot be taken as a fact or proof or indication that the plaintiff has no remorse and has not repented. There is no reported cases where the courts had held that a solicitor

who appealed against the decision of the Disciplinary Board is considered to be without remorse. It is of the considered view that the 2017 Suit was a matter of last resort for the plaintiff to seek justice from the court.

[34] Repentant and remorse cannot be objectively measured. No direct evidence is necessary to be adduced to prove remorsefulness or penitence as they can be clearly inferred from the circumstances, specifically from the averments deposed to by the plaintiff in his affidavits. This court has also the advantage of seeing and hearing the plaintiff himself in court as he stood before this court conducting the present matter. Apart from the averments in his affidavits, this court observed and finds that the plaintiff has suffered the punishment. The gravity of regret and shame can clearly be seen in him. In *Thavananthan a/l Balasubramaniam v Majlis Peguam Negara*, the Federal Court stated:

> [6] The appellant need not go as far as to categorically express in writing or in his affidavit that he was repentant and would maintain the integrity and the standards expected of him as a legal practitioner. The fact that the appellant had filed his application to be restored to the roll which was supported by the various letters of recommendation and testimonial by senior members of the Bar and the judiciary were more than sufficient to show that the appellant is now fit and proper person.

[35] In the case of *Darshan Singh Atma Singh v Majlis Peguam Malaysia* [2015] MLJU 2350; [2015] 4 CLJ 1083, Gunalan Muniandy JC (as His Lordship then was) stated as follows:

> [13] As for remorsefulness or penitence, this can be clearly inferred from the circumstances, specifically the averments deposed to by the applicant in both his affidavits. It is a state of mind for which no direct evidence would be necessary ...

[36] The plaintiff has repeatedly states that he regrets very much of his failure to issue an official receipt to the complainant leading to the striking off. He further states that at the age of 67 and having learnt his lesson from the punishment imposed upon him, he will surely be more careful in executing his role as an advocate and solicitor. He further submits that at his age, he will not do any act that will tarnish the good name of the legal profession.

[37] The plaintiff states that if the present application is allowed, it will enable him to serve the public again as an advocate and solicitor and that he will be able to be a useful citizen to the public.

[38] Repentance and remorse have no relationship with the action taken by the plaintiff in the 2017 Suit. An appeal against the decision of the Disciplinary Board is a right given by the law to the aggrieved advocate and solicitor against the order made by the Disciplinary Board. The plaintiff cannot be punished for exercising such rights made available under the law.

[39] It is sufficient for the plaintiff to be seen as committed to personal change and resolved to live a more responsible and humane life. He had accepted the punishment and had not appealed against the decision of the Disciplinary Board. He had dismantled his legal practice wilfully. In addition, the plaintiff had suffered financial loss and shame for 32 years. It cannot be disputed that during the long lapse of time, he had led a blameless life since his suspension in 1989 until now.

[40] The plaintiff has also settled his debt and was discharged from bankruptcy on 24 February 2017. In *Khong Jin Teong v Majlis Peguam Malaysia* [2015] 2 CLJ 1109 the court was of the view that the efforts and determination of the plaintiff in settling his debts was commendable and took that fact as a consideration in restoring the plaintiff to the roll. The court stated:

> (v) Despite the RO & AO having been made against him by his former firm the plaintiff had worked hard and through sheer determination and perseverance he managed to put himself out of the financial difficulties and obtained the orders to annul the RO & AO made against him. This is commendable as many bankrupts out there are not able to be discharged from their bankruptcy status and sadly some of them even die as bankrupts.

[41] Further, it cannot be disputed that the complaint 1 lodged by the complainant has been resolved in that the plaintiff had issued the receipt to the complainant. The complainant for that matter did not proceed any further with their complaint. There is no question of restitution as the plaintiff did not misappropriate the complainant's money and no report has been lodged as to that effect. The complainant's letter dated 31 March 1987 to the KBC relates only to the plaintiff's delay in responding/replying to their letter relating to the amicable settlement between the complainant's client ie the bank and the plaintiff's client.

[42] The plaintiff had taken care of his personal behaviour and conduct in society with no criminal or civil charges or claims brought against him during the period despite the difficulties in life that he had to undergo due to his inability to practice the profession of his choice. It could hardly be said that a man of 67 years old is not remorseful for his misdeeds. After 32 years of being punished, the plaintiff could not be expected to wait another ten or 20 more years to undergo 'rehabilitation' to be considered as a fit and proper person to practice law. 32 years is more than sufficient to rehabilitate a person who had failed to issue an official receipt.

[43] In the case of *Patrick Samuel a/l Joseph Sebastian v Majlis Peguam Malaysia* [2014] 9 MLJ 479, the High Court found that the application for restoration to the roll filed almost ten years after the applicant therein has ceased practiced and three years after he was struck off the roll was sufficient for

him to be readmitted and resumed practice. Hasnah Hashim J (as Her Ladyship then was) stated as follows:

> [22] Based on the facts before us the applicant had in fact ceased practice in 2003 and the disciplinary committee only struck him off the roll in 2010, seven years after the complaint was lodged. The application was filed almost ten years after the applicant has ceased practiced. Furthermore the facts of the case also show that the applicant is remorseful repentant and penitent over the incidence. He has paid all the fines due and he is also keen to pay the monies owing to the complainant. There is no time frame stipulated under s 107 of the LPA before a disbarred member can be restored to the roll. In this particular case therefore it is not too early to consider whether he is a fit and proper person to resume practice as there is a lapse of ten years since he ceased practice and three years after he was struck off the roll.

[44] In *Thavananthan a/l Balasubramaniam v Majlis Peguam Negara* the Federal Court had stated that it was grossly unfair and unreasonable for the appellant to be made to endure the long wait before he filed again for reinstatement to the roll.

[45] In *Khong Jin Teong v Majlis Peguam Malaysia*, two complaints were lodged against the plaintiff, an advocate and solicitor, to the Disciplinary Board by two clients alleging that the plaintiff had misappropriated a retention sum of RM2,500 for real property gain tax and that he had failed to return a stakeholder sum of RM44,000 respectively. The plaintiff did not attend the Disciplinary Board hearing but instead sent a letter to the Disciplinary Board, admitting to the complaints and reiterating that he was responsible for the complaints. The plaintiff paid the respective sums to the complainants and the complainants withdrew their complaints against the plaintiff. Despite these withdrawals, the Bar Council intervened into the complaints pursuant to r 8 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 by filing formal complaints with the Disciplinary Board. The Disciplinary Committee found the plaintiff guilty of both complaints and recommended that the plaintiff be struck off the roll of advocate and solicitor of the High Court. Accordingly, the plaintiff was struck off the roll. The plaintiff filed the application to be restored to the roll pursuant to s 107 of the LPA. The High Court through the judgment of Asmabi Mohamad J (as she then was) held:

> vii) As I had illustrated above it is not the intention of the LPA to impose a permanent sanction on the plaintiff and prevent him from returning to his profession, the one and only trade he knew to make a living for himself as well as his family members. That was the precise reason s 107 of the LPA was enacted to offer a second chance to an advocate and solicitor who had turned over a new leaf. Further on the factual matrix of this case there was a lapse of ten years from the time the order to remove him from the roll was made to the time he submitted his application for reinstatement under s 107 of the LPA. The plaintiff had suffered

long enough economically, professionally, spiritually and socially. This too, ought to be considered by this court.

(viii) In the case of *Thavananthan Balasubramaniam v Majlis Peguam Malaysia* the Federal Court held that the court ought to examine the trend and pattern of sentences imposed by other courts as a guide to decide whether to restore the plaintiff to the roll. The Federal Court had also held that it is grossly unfair and unreasonable for the applicant to be left in a limbo and to endure the long wait before he could be reinstated. The law too does not envisage that an advocate and solicitor who had been struck off the roll must be totally barred from returning to the profession.

[46] In *Teoh Hooi Leong v Bar Council* the Supreme Court had stated that:

[2] The lapse of time since the conviction is a material consideration and if an advocate and solicitor lives a blameless life and there is evidence of rehabilitation and there are members of the profession who can vouch to this change, that may overcome the initial misconduct.

[3] In this case, there is no evidence that T has committed any irregularity during the last 14 years and the lapse of 14 years from the date of breach to the date of application for readmission was a factor in T's favour.

[47] Premised on the authorities cited in the above, this court is of the considered view that the plaintiff should not be treated differently as he has served a longer period of punishment compared to the appellant/applicant/plaintiff in the cases cited in the above.

[48] This court is also satisfied that the plaintiff has demonstrated that he is still very much in touch with the law. He is very able in arguing his case before this court and had apply the law correctly. It can clearly be seen that he has been keeping himself updated with the development of the law.

[49] The plaintiff has averred that from 2017 he had represented six parties in their claims at the Kuala Lumpur Regional Centre for Arbitration (KLRCA) as he was allowed to pursuant to s 38 of the LPA. He had succeeded in obtaining the awards in favour of the parties that he represented. As such it cannot be gainsaid that his disbarment had caused him to be lost in touch with the law. In *Chan Chow Wang v Malaysia Bar* [1986] 2 MLJ 159, the plaintiff therein was struck off the roll of advocate and solicitor by the High Court of Singapore but he had been practicing for a period of four years in Malaysia and was found to have observed the ethics of the profession and that he has suffered professionally, socially and economically and is truly repentant. The court was satisfied that it was fair and reasonable to re-admit the plaintiff to the Bar of Malaya.

[50] Taking into account that the plaintiff herein has been practicing at the KLRCA without any complaint from his clients and the fact that he represented himself all the way to the Federal Court in the 2017 Suit, it is of the considered view that the plaintiff is fit and proper person to be re-admitted to the roll and to be able to practice again.

CONCLUSION

[51] On a full consideration of the facts and circumstances of this case, this court is satisfied that it is fair and reasonable to re-admit and restored the plaintiff to the roll of advocate and solicitor pursuant to s 107 of the LPA. The plaintiff's application was therefore allowed.

Plaintiff's application allowed.

Reported by Dzulqarnain Ab Fatar